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Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by Liberation, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 August 1996]

The issue of "comfort women"

1. Liberation fully supports the final report of the Study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, and submitted to the Sub-Commission by the Special Rapporteur Theo van Boven (E/CN.4/Sub.2/1993/8). Today, we would like to focus on the importance of this report and the guidelines contained in it in the light of the fact that the Special Rapporteur's report has been completely ignored by the Government and courts of Japan, while no rehabilitation measures have yet been taken for the victims of gross violations of human rights.

2. Ms. Radhika Coomaraswamy, the Special Rapporteur of the Commission on Human Rights on violence against women in her report (E/CN.4/1996/53/Add.1) submitted to the Commission in January 1996, defined "comfort women" as

military sexual slaves and declared that the conduct of the old Japanese army towards them constituted a "crime against humanity". In her report, she recommended that the Government of Japan should: (i) recognize its violation of international law in regard to this issue and accept legal responsibility for that violation; (ii) pay compensation to individual victims in accordance with principles outlined by Mr. Theo van Boven and set up a special administrative body for this purpose; (iii) fully disclose documents and materials in its possession with regard to this issue; (iv) make a public apology; (v) amend educational curricula to reflect historical realities; and (vi) identify and punish perpetrators. Ms. Coomaraswamy's report which consists of three parts, two parts focusing on family violence and the last on the "comfort women" issue (E/CN.4/1996/58 and Add.1 and 2) was taken note of by the Commission in its resolution 1996/49 on 19 April 1996.

3. However, Mr. Hirabayashi, head of the Cabinet Research Room on Diplomatic Affairs, commented that the report concerning the "comfort women" issue was not included in that resolution, suggesting that the Tokyo authorities will ignore her report. Japan's tricky word game was followed by controversial remarks by Mr. Okuno, former Minister of Justice and Chairman of "Bright Japan", a body composed of 116 rightist Diet members. He said, on 4 June, that the so-called comfort women were simply recruited and that they were engaged in "commercial activity".

4. While denying its legal obligation the Government of Japan is trying one-sidedly to settle the issue through a private fund, which is the target of fierce protest and criticism by victims and their support groups. The civilian fund, which was set up last year at the initiative of the Government to provide some "consolation money" to the victims of sexual slavery in lieu of compensation, is totally against the principles indicated by Mr. Theo van Boven. This is because, firstly, this approach lacks "public acknowledgment and apology accompanied by acceptance of responsibility" by the authorities. The Government of Japan still refuses to recognize the fact that the "comfort women" issue constitutes a crime against humanity. Secondly, "thorough investigation and full disclosure of materials and documents" have not yet been made. The Government has already suspended its investigation of this issue. Thirdly, it fails to "bring before justice those responsible for the violation". The Tokyo District Public Prosecutor's Office in 1994 refused to accept two complaints submitted by a group of "comfort women" in the Republic of Korea. Fourthly, no measures have been taken for the rehabilitation of the dignity of the victims. In a nutshell, the private fund is aimed not for the rehabilitation of the victims of the gross violation of human rights but for the evasion of Japan's state responsibility. This is another insult on the dignity of the victims.

5. Apart from military sexual slaves, over 1 million people were forcibly deported from the Korean Peninsula to Japan, Sakhalin and other places by Japan. These Koreans worked in mines and military facilities and on construction sites as forced labourers. Some of them were taken to the South Sea Islands as army civilian employees or de facto slave workers for the Japanese military.

6. Some forced labourers filed suits with Japanese courts, seeking compensation and reparation from the Government. In the latest development, the Toyama District Court in Japan, on 24 July 1996, rejected a damages suit filed against Nachi-Fujikoshi Corp. by three south Koreans, seeking compensation for their wartime labour as machine tool makers in the 1940s. Although the court acknowledged that the company owed the plaintiffs unpaid wartime wages, it turned down their plea, citing as reasons the statute of limitation and the period of exclusion. During the trial, the plaintiffs based their claim on Mr. Theo van Boven's report. However, the court said that his report did not go beyond the limit of a proposal and that it could not be a ground for ruling out the application of the period of exclusion. The Japanese court is completely ignorant of the point indicated in the report that "claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations".

7. Meanwhile, some Koreans who lost their hands or feet during the forced labour in the South Sea Islands appealed to Japanese courts that paying compensation only for Japanese ex-soldiers and not for former Korean civilian army employees constituted a discrimination violating article 14 of the Japanese Constitution and article 26 of the International Covenant on Civil and Political Rights, both of which guarantee equality before the law. However, local courts in Tokyo and Osaka rejected their plea, saying that it could not be discrimination forbidden by law.

8. The Public Officials Pensions Act and the Relief Act for War Injuries and Deaths provide that a pension is provided for those ex-soldiers who worked for the army for a certain period of time or who suffer serious injury, but not for those who lost Japanese nationality. Since the end of the Second World War until today, the Government has paid out a total of about 40 trillion yen (US $870 billion) in pensions to Japanese ex-soldiers and civilian army employees. For example, an ex-civilian army employee who lost his hand has received more than 72 million yen (US $650,000) from the State during the period from 1952 to 1995. However, not even a penny has been paid to Korean ex-civilian army employees. It is very unlikely that foreign victims get relief from the Japanese courts. As a result, the responsibility of the State and enterprises for war crimes may fade away.

9. The perspective of the Japanese State and enterprises on war crimes was well described in the Government's report countering Mr. Theo van Boven's report (E/CN.4/Sub.2/1994/7/Add.1) which was sent to the Sub-Commission in the form of a letter, and in which it stated: "There is no common understanding about what is a crime under international law", and this, therefore, leads to a theory that a crime violating international law does not exist after all. As a matter of fact, the Government does not regard as crimes the above-mentioned war crimes and crimes against humanity it committed. For example, war criminals on whom the death penalty was imposed by the International Military Tribunal for the Far East are deified in the Yasukuni Shrine in downtown Tokyo as souls of the departed war heroes, and

Cabinet ministers visit the shrine every year. Last month, Japan's Prime Minister, Ityutaro Hashimoto, visited and paid his respects at the shrine. In a reply to a question by a reporter, he commented that his visit has nothing to do with A-class war criminals.

10. The above-mentioned facts indicate that the Government of Japan fails to recognize Japan's war crimes and crimes against humanity, and this stance is expressed in its counter argument against Mr. Theo van Boven's report. Japan's criticisms of the proposed basic principles and guidelines drawn up by Mr. Theo van Boven only serve to emphasize their justness and significance. This indicates that there exist some forces in the world that refuse to recognize crimes against international law and try to evade their responsibility.

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